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16 ROBERT ARMIJO,

17 Plaintiff,

18 v.

19 OZONE NETWORKS, INC. d/b/a OPENSEA,
20 a New York Corporation, YUGA LABS LLC
21 d/b/a BORED APE YACHT CLUB, a Delaware
22 limited liability company; LOOKSRARE; and
23 DOES 1 to 50,

24 Defendants.

25 Case No.: 3:22-cv-00112-MMD-CLB

26 **DECLARATION OF JENNIFER C.
27 BRETAN IN SUPPORT OF
28 DEFENDANT YUGA LABS' MOTION
TO DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

1 I, Jennifer C. Bretan, hereby declare as follows:

2 1. I am a partner at Fenwick & West LLP, counsel for defendant Yuga Labs, Inc.

3 I submit this declaration in support of Yuga Labs' motion to dismiss plaintiff's First Amended
4 Complaint pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6). I have personal
5 knowledge of the matters set forth below and, if called upon, would testify competently to them.

6 2. Attached as **Exhibit A** is the March 25, 2022 judgment in *Tulip Trading Ltd. v.*

7 *Bitcoin Ass 'n for BSV & Others* [2022] EWHC 667 (Ch) BL-2021-000313, in the High Court of
8 Justice, Business and Property Courts of England and Wales, holding that Bitcoin software
9 developers do not owe a common law duty of care to protect cryptocurrency owners from fraud
10 that leads to a loss of their crypto assets.

11 3. Attached as **Exhibit B** is a true and correct copy of the publicly available Deed of

12 Sale of Lot 17 in Block A of Ponderosa Subdivision No. 3, Washoe County, Nevada, APN No.
13 122-111-19, dated April 20, 2022, an Incline Village, Nevada residence previously belonging to
14 plaintiff, as recorded by the Washoe County Recorder on April 25, 2022 and available on its
15 website (last accessed July 29, 2022, available at

16 <https://icris.washoecounty.us/ssrecorder/web/integration/document?DocumentNumberId=529777>
17 95).

18 4. Attached as **Exhibit C** is a true and correct copy of publicly available real

19 property assessment data reflecting the transfer of an Incline Village, Nevada residence
20 previously belonging to plaintiff, APN 122-111-19, on the Washoe County Assessor's Office
21 website (last accessed July 29, 2022, available at

22 <https://www.washoecounty.gov/assessor/cama/?parid=1221119>), highlighted for the Court's
23 convenience.

24 5. Attached as **Exhibit D** is a true and correct copy of the Bored Ape Terms &

25 Conditions, available on the BAYC website at <https://boredapeyachtclub.com/#/terms>,
26 highlighted for the Court's convenience. The FAC references and relies on the terms reflected in
27 Exhibit D at FAC ¶¶ 57, 173 and thereby incorporates them by reference.

6. Attached as **Exhibit E** is a true and correct copy of the Mutant Ape Terms & Conditions, available on the BAYC website at <https://boredapeyachtclub.com/#/mayc/terms>, highlighted for the Court's convenience. The FAC references and relies on the terms reflected in Exhibit E at FAC ¶¶ 57, 173 and thereby incorporates them by reference.

7. In a May 2, 2022 letter, prior to the filing of the FAC, I informed plaintiff and his counsel that Yuga Labs “did not post the billboards and bus stop advertisements” that plaintiff’s FAC references and relies on to claim there is jurisdiction over Yuga Labs in Nevada.

I declare under penalty of perjury that the foregoing is true and correct. Executed this twenty-ninth day of July, 2022, in Piedmont, California.

/s/ Jennifer C. Bretan
Jennifer C. Bretan

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INDEX OF EXHIBITS

Exhibit	Description
A	<i>Tulip Trading Ltd. v. Bitcoin Ass 'n for BSV & Others</i> [2022] EWHC 667 (Ch) BL-2021-000313
B	Deed of Sale of Lot 17 in Block A of Ponderosa Subdivision No. 3, Washoe County, Nevada, APN No. 122-111-19, dated April 20, 2022, as recorded by the Washoe County Recorder on April 25, 2022, available at https://icris.washoecounty.us/ssrecorder/web/integration/document?DocumentNumber=5297795 .
C	Real property assessment data reflecting the transfer of an Incline Village, Nevada residence, APN 122-111-19, as reflected on the Washoe County Assessor's Office website, available at https://www.washoecounty.gov/assessor/cama/?parid=12211119 .
D	Bored Ape Terms & Conditions, available at https://boredapeyachtclub.com/#/terms
E	Mutant Ape Terms & Conditions, available at https://boredapeyachtclub.com/#/mayc/terms

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on July 29, 2022, a true and correct copy of the **DECLARATION OF JENNIFER C. BRETAN IN SUPPORT OF DEFENDANT YUGA LABS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT AND EXHIBITS A-D** was transmitted electronically through the Court's CM/ECF e-filing electronic notice system to all attorneys associated with the above-captioned case.

/s/ Jennifer C. Bretan

Jennifer C. Bretan
Fenwick & West LLP